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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 WANG,

4 Plaintiff,

5 v.

12 CV 793 (HB) (AJP)

6 THE HEARST CORPORATION,

7 Defendant.

8 -----x  
9 New York, N.Y.  
May 24, 2012  
11:30 a.m.

10 Before:

11 HON. ANDREW J. PECK,

12 Magistrate Judge

13 APPEARANCES

14 OUTTEN & GOLDEN

15 Attorneys for Plaintiff

16 BY: ELIZABETH WAGONER

ADAM T. KLEIN

17 JONATHAN R. DONNELLAN

18 Deputy General Counsel, Hearst Corporation

Attorney for Defendant

-and-

19 PROSKAUER ROSE

Attorneys for Defendant

20 BY: MARK W. BATTEN

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(In open court)

THE COURT: All right. I've read your letters, let's try to take the issues one at a time starting with the e-mail hit list. While I agree that cooperation is certainly the way to go, it doesn't mean somebody has to do something that is going to be largely useless. On a lot of these, it seems to me the odds of these common words being useful are pretty slim. Some of the other things, free labor, if there are more than zero hits I would be surprised. But in any event, that may be appropriate for the hit list approach, having -- whether it's five hits on the word "cut" and since it has got the universal at the end of it that would include cutlery and various other words, hardly seems useful at this stage of the case in particular.

So, let me hear first from Mr. Klein or, sorry, I can't read fast enough, Ms. Wagoner, and then I'll hear from the defense on this issue. But I'm inclined to say that a lot of the list has got to go.

MS. WAGONER: Thank you, your Honor. With respect to the issue you just raised about some of the terms that seem to be universal, there may be some confusion about the terms that we've suggested. Because the terms cut, save, lower, that kind of thing are meant to be read in conjunction with the first line of that list, which specifically ties them to the words overtime, labor, payroll, staff. To try to capture e-mails

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1 that might have discussed cutting labor costs or reducing labor  
2 costs, because interns had been hired.

3 And as I'm sure you know, one of the issues in this  
4 case is did Hearst cut their labor costs by using the unpaid  
5 labor of interns.

6 So in that sense, the word "intern" might not  
7 necessarily be in an e-mail that discusses this sort of general  
8 principle of needing to cut labor costs. That's why those  
9 terms are in there.

10 I did notice that defendant's submission on May 11  
11 raised this issue. Unfortunately, we didn't receive that  
12 letter until yesterday. So, we weren't able to address that  
13 confusion with the Court because we just received it. But that  
14 I hope would alleviate some of the concerns about these terms  
15 in the bottom half of our hit list. As far as the terms --

16 THE COURT: Let me stop you right there. If I'm  
17 understanding what you've now said, the document or the e-mail  
18 in order to satisfy this would have to have the exact phrase  
19 overtime, labor, payroll, staff, head count, etc., the next  
20 four, five, six words, and somewhere else in the body of it,  
21 cut, trim, etc. Is this what you are saying? And what are the  
22 odds of that mouthful being in any document in exactly that  
23 form?

24 MS. WAGONER: Well, our hope was that it would be one  
25 of these words, and then one of the words in the second -- in

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1 the rest of the list.

2 THE COURT: All right. In any event, it seems to me  
3 lowering costs in the abstract is not something you need  
4 documents for, unless it is tied to lowering payroll costs by  
5 using interns, yes, it may have the most marginal relevance.  
6 But it does not seem like a good way to go about it at this  
7 stage of the case.

8 Let me hear from the defense on just this portion of  
9 the keyword list.

10 MR. DONNELLAN: Your Honor, Jonathan Donnellan on  
11 behalf of Hearst.

12 The class allegations in this case are premised on the  
13 fact that there is a corporate policy or practice with respect  
14 to interns. And the discovery was limited by Judge Baer for  
15 this preliminary purpose of opposing our motion to strike those  
16 class allegations to get to that. That was the focus of our  
17 document production, and also of the depositions which have  
18 been ordered. And, we believe, as you do, that any -- or as  
19 you indicated, that any relevant documents or responsive  
20 documents which are going to have to do with a corporate  
21 practice or policy with respect to interns are going to have  
22 the word intern, interns, internship, interning, and/or  
23 interned in it, and that we agreed to do a search with those  
24 five words. In addition to producing documents with respect to  
25 any of the terms and conditions of internships, in any of the

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1 programs.

2 And there simply are not that many of those documents  
3 for precisely the reasons we spelled out in our motion to  
4 strike.

5 But going beyond that, these words are extremely  
6 common, and the sort of laborious approach here starts to bring  
7 you into a class-wide discovery or a broader scope of  
8 discovery, which our motion is specifically designed to avoid.

9 The whole reason we brought the motion to strike at  
10 the outset was because the allegations in the complaint about a  
11 class theory which remain on information and belief are  
12 unfounded and have no basis in fact. And to the extent that  
13 there are going to be these sorts of policy or practices, and  
14 have to do with reductions or savings through the use of  
15 interns, it is going to include that word in it.

16 So we believe that we have fully complied with respect  
17 to the scope of discovery, and given plaintiffs everything they  
18 need at this point to oppose our motion to strike.

19 THE COURT: Let me hear, Ms. Wagoner, anything else on  
20 the bottom half of the e-mail hit list that you want to say?

21 MS. WAGONER: Just one more point, your Honor, is that  
22 we have asked that the searches be run on just two custodians,  
23 and the searches are limited in temporal scope because  
24 defendant has informed us that they have an auto delete policy  
25 after 60 days. So we are not actually talking about a very

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1 large body of e-mails that would need to be searched.

2 And my final point, in response, would just be that if  
3 labor savings are being discussed, for example, or if an order  
4 has been given to an intern to run an errand or do a delivery  
5 or something like that, the word "intern" isn't going to appear  
6 necessarily. Somebody's name might appear, for example.

7 THE COURT: All right. Well, that's a second class of  
8 your potential discovery. But how does your suggestion fit in  
9 with what Judge Baer in his order of April 12 said you can have  
10 discovery about?

11 MS. WAGONER: Well, Judge Baer's order basically came  
12 down before there had been any discovery at all. We had an  
13 initial conference on April 5. Defendant filed its motion on  
14 April 4. So at that point it was not clear exactly what kind  
15 of discovery we would be getting and what the scope would be.  
16 That was left for the parties to determine over the course of  
17 the 30-day discovery period, and Judge Baer did instruct us to  
18 inform the Court if it turned out that there was insufficient  
19 information. And one large category of information that we  
20 have not gotten through the discovery that we've gotten and the  
21 witnesses we've been given is what interns actually did at  
22 Hearst. That is an overarching theme I think of all of these  
23 disputes.

24 THE COURT: Isn't that likely something you get by  
25 deposition?

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1 MS. WAGONER: Well, we had hoped it would be, your  
2 Honor. And we had a deposition earlier this week of one of the  
3 HR representatives the defendant has given us, Sherry Roberts.  
4 And we questioned her about the 35 declarations that were  
5 submitted in connection with defendant's motion. And she was  
6 unable to testify about any of the allegations in the  
7 declarations going to what the interns actually did, and said  
8 specifically that only the declarants themselves, only people  
9 who worked on the magazines, would have that information.  
10 We're in a position now --

11 THE COURT: Isn't that the problem that defendants  
12 point out with your class approach -- I've not read the  
13 declaration, I skimmed very quickly this morning their motion  
14 to strike the class and collective allegations. And they seem  
15 to argue that while Hearst is one corporate entity, each  
16 magazine runs its own internship program.

17 MS. WAGONER: Well, we feel that we are entitled to  
18 challenge the allegations that each of those declarants made  
19 and prove that --

20 THE COURT: The question is how. And it doesn't seem  
21 like these keywords, particularly if it is limited to the last  
22 60 days as of today, when it's probably in the midst of  
23 whatever semester-wise internship program is going on, this  
24 doesn't seem the right way to go about it.

25 So without further discussion, other than you can look

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1 at Mr. Klein's note and see if you have anything you have to  
2 add, otherwise I'm going to -- is there?

3 MS. WAGONER: It goes to a different issue.

4 THE COURT: Hold the different issue.

5 MS. WAGONER: All right.

6 THE COURT: As to the bottom half of this list, the  
7 overtime or labor and saved, cut, whatever, I'm denying that at  
8 this stage. Meaning at this opposition to the motion stage.  
9 If the class is certified, or a collective action is issued,  
10 this may be an appropriate way to get at information. But it  
11 isn't at this stage.

12 As to the other thing, I guess, first of all,  
13 Mr. Donnellan, is it correct that all e-mail disappears in 60  
14 days?

15 MR. DONNELLAN: Unless the individual archives it.  
16 And we have searched the archives and we have produced e-mails  
17 over a six-year period going back to the limitations period.

18 THE COURT: All right. As to these other phrases, it  
19 seems like you're doing several things with this list. One is  
20 what did particular interns do. Did they run errands. Which  
21 I'm not sure this is the way to get it, particularly from HR.  
22 As to FIT or college, university, etc., and Department of Labor  
23 and minimum wage, those might be appropriate.

24 So why don't you first address the college, FIT, DOL  
25 minimum wage group, and then after we all discussed that, deal



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1 with ones that seem to deal with what particular interns such  
2 as the named plaintiff had to do.

3 MS. WAGONER: Sure. The Hearst magazines has a policy  
4 that interns are required to purchase school credit as a  
5 condition of working as an intern at Hearst. They're required  
6 to purchase it from a college or university. That is --

7 THE COURT: I think that may be semantics. I think  
8 the way they described the program is to be eligible for an  
9 unpaid internship, you have to get college credit.

10 If that is their position, why do you need discovery  
11 on that? It seems to be that it is admitted. If it is not  
12 admitted in the right place for the right buzz words, you can  
13 quote it neatly in your papers, then it seems to me we can do a  
14 stipulation or you can do a request to admit. You don't need  
15 e-mails about it. Or are you suggesting that that's not their  
16 policy?

17 MS. WAGONER: We would like to explore the contours of  
18 the policy and the limits to the policy and the enforcement of  
19 the policy. And that is the reason that these terms are in  
20 here.

21 THE COURT: In what way? Frankly, you say that it is  
22 an illegal deduction to wages, the wages being zero, but that's  
23 another point. They say, as do many employers, that to be an  
24 unpaid intern you have to get school credit for it. That's  
25 either legal or illegal. I don't understand what you mean by

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1 the contours of it.

2 Are you suggesting that they let people like Ms. Wang  
3 submit something that isn't true or that's what they allege  
4 now? That they wink at this?

5 I'm not sure what you are doing or what you want to do  
6 with this discovery.

7 MS. WAGONER: We'd just like to know the extent to  
8 which it was enforced. Was it enforced? Did they make  
9 exceptions to it?

10 THE COURT: Is there any allegation that it wasn't  
11 enforced? Is that your allegation?

12 MS. WAGONER: No.

13 THE COURT: Then what do you need to explore? Your  
14 allegation is they tied the internship to an illegal deduction  
15 from wages. They admit that. Not the illegal part, not the  
16 tying, but they admit their policy, as I understand it, and you  
17 all can correct me if I'm wrong, that their policy is you can't  
18 be an unpaid intern unless you're getting school credit for it.  
19 So, the facts seem admitted. The buzz words you each want to  
20 put on it, one it's a valid internship program, the other is it  
21 is an illegal deduction from wages, is a legal argument you'll  
22 make to Judge Baer.

23 What am I missing?

24 MS. WAGONER: I think we want as much information  
25 about the policy as we can get.

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1 THE COURT: You can ask at the deposition.

2 Now, the particular running errands, why would that be  
3 in HR?

4 MS. WAGONER: First of all, HR had interns in its own  
5 department. So, if these are the custodians of e-mails, it  
6 would be helpful to see some examples of instructions that HR  
7 interns were given, for example.

8 THE COURT: If that's no different than the fashion  
9 magazine, Popular Mechanics and whatever the other Hearst  
10 magazines are that I'm not remembering names of, if you're only  
11 doing this from two custodians, I don't understand what the  
12 point is of this.

13 MS. WAGONER: The point of terms that are looking  
14 for --

15 THE COURT: Running errands.

16 MS. WAGONER: -- instructions and that kind of thing?

17 THE COURT: Yes.

18 MS. WAGONER: Again, it is to try to get discovery  
19 about what the interns actually did on the magazines or in the  
20 corporate departments.

21 THE COURT: Did you ask the HR deponent what her  
22 interns did?

23 MS. WAGONER: Well, it matters because --

24 THE COURT: First answer my question then add.

25 MS. WAGONER: Yes.

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1 THE COURT: What did -- I assume it's a she -- what  
2 did she say?

3 MS. WAGONER: She said that she didn't know because  
4 she didn't supervise that person. Presumably there are other  
5 deponents would who know. We're still exploring that.

6 But, the problem here is the deponent we've had so far  
7 said that the interns' work didn't provide any benefit to  
8 Hearst, said what they do isn't a benefit to them.

9 If we have deponents who are saying that these people  
10 aren't giving us any benefit, they are not doing anything for  
11 us, and we have e-mails that contradict that, it would be  
12 helpful to impeach these witnesses.

13 THE COURT: We are not dealing with impeachment as  
14 such at this stage.

15 MS. WAGONER: I think, though, that we are trying to  
16 challenge their characterization about whether or not the  
17 interns performed beneficial work for them.

18 THE COURT: What interns? Either there is a policy  
19 here, which is what you're arguing, or there isn't. If the  
20 class is certified, then you get to explore what the interns  
21 did, whether that's a benefit to Hearst or not.

22 Right now, as I think I understand what Judge Baer has  
23 said, is you're supposed to get whatever is the corporate  
24 procedures, policy, etc., for dealing with interns. So,  
25 whether particular intern X who worked for somebody else in HR

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1 that wasn't the deponent ran errands or not, seems like much  
2 too small of any sort of anecdotal sample to get you beyond  
3 what Ms. Wang has already said in her complaint as to her  
4 running errands or the like.

5 I'm trying in order for you to get this discovery done  
6 and get your case moving on the merits either as to an  
7 individual, a collective action or a class, not get you bogged  
8 down on something that doesn't look like it's going to get you  
9 anywhere.

10 MS. WAGONER: And I appreciate that. But I think that  
11 some of these terms would pick up actual -- would pick up  
12 policies. For example, there is one memorandum that we  
13 received that discusses using interns as a policy to perform  
14 deliveries for the magazine. So, that's an example of a  
15 class-wide issue, if this is something that interns were  
16 actually required to do not at a specific magazine, but we use  
17 this type of worker to do this type of work.

18 THE COURT: If it's we use this type of worker,  
19 presumably it would have the word "intern" in it.

20 MS. WAGONER: Or it could just be "unpaid worker" or  
21 it could be "the students."

22 THE COURT: If "unpaid worker" and "student" are  
23 synonyms in your mind for intern, then I would think that can  
24 get run through like the variations on the word "intern."

25 Any objection to that from the defense, Mr. Donnellan?

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1 MR. DONNELLAN: No, your Honor.

2 THE COURT: Good. Anything else?

3 MS. WAGONER: No, your Honor. Not on this point.

4 THE COURT: Okay. Then other than those words, no hit  
5 list.

6 Now, the other issue was samples of e-mails with  
7 interns. Has that been done for example for any e-mails  
8 between these two custodians and Ms. Wang?

9 MR. DONNELLAN: Your Honor, there has, and we have I  
10 believe attached those to our motion papers. With respect to  
11 the other names, there have been and I think this is reflected  
12 in our papers, approximately 3,000 interns over the six-year  
13 period. And it seem to us extraordinarily unlikely to the  
14 extent that we are distinguishing between class discovery and  
15 merits discovery, that to the extent that what the allegations  
16 are here is there a corporate policy or practice with respect  
17 to the use of interns, that any relevant e-mails would not have  
18 the words "intern" or some variation of that. And there would  
19 be some sort of a communication with an individual intern which  
20 would not have that word in it. That's in particular given the  
21 testimony that we received from the HR declarant, the head of  
22 HR Sherry Roberts, where she basically said she's had no direct  
23 contact with interns at all. And they're going to have an  
24 opportunity to speak with the other HR representative as well  
25 tomorrow at deposition.

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1 But the fact of the matter is to the extent we are  
2 focused on the class, we are focused on policies and practices  
3 with respect to interns, that there is not going to be a  
4 document that has a name in it and is not going to have one of  
5 those words.

6 THE COURT: I guess the question I have, Ms. Wagoner,  
7 is, first of all, so this isn't just a frolicking detour, how  
8 would you pick the 50 names and know that they had any  
9 interaction with HR? That's question number one.

10 MS. WAGONER: We would have to work with defendant to  
11 determine which are the 50 -- I imagine we would have to  
12 actually ask the custodian of the e-mail account who she  
13 corresponded with in order to --

14 THE COURT: It sounds like from one of your two  
15 custodians the answer is nobody.

16 MS. WAGONER: We learned that on Monday.

17 THE COURT: Why don't you ask tomorrow what interns if  
18 any that HR person supervised. And then depending on what he  
19 or she says, ask some more questions to find out what the  
20 content of those e-mails likely were, and then either you'll  
21 all agree to search for those or I'll be seeing you shortly  
22 after the deposition and you'll order that part of the  
23 transcript expedited and I'll rule on it.

24 MS. WAGONER: I think that makes sense as a solution  
25 to figure out who these people are. I will say, though, that

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1 defendant has refused to give us the names of any intern which  
2 is another issue that I imagine you're getting to, but it would  
3 at this point be difficult to ask that question and get an  
4 answer because we've been told that defendant will not answer  
5 questions about specific individuals.

6 THE COURT: As to handling this issue before we get to  
7 the other redacted documents, Mr. Donnellan.

8 MR. DONNELLAN: Well, your Honor, I might be able to  
9 short circuit things a bit because I expect when they ask  
10 Ms. Helmus tomorrow which interns, the answer she is going to  
11 say is interns that were in the HR department.

12 THE COURT: Okay. Any objection to giving those  
13 people's names?

14 MR. DONNELLAN: I object to giving their names, but I  
15 would not object to running a search on those names and  
16 producing e-mails with the names redacted, as we've done with  
17 any other documents with those names. This goes to the final  
18 issue if I can turn to that now.

19 THE COURT: Let me rule on this first. Which is since  
20 you've just volunteered to do it, without the need for it to be  
21 asked at the deposition, subject to whatever I rule finally on  
22 the whole redaction issue, you'll now search for the e-mails  
23 that the HR person had with her interns.

24 MR. DONNELLAN: Yes.

25 THE COURT: That's done.



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1 Now, let's turn to the more general redaction issue  
2 and why don't you go first, Mr. Donnellan.

3 MR. DONNELLAN: Well, your Honor, this goes back to  
4 the initial order of Judge Baer. Following our status  
5 conference plaintiffs had written in a letter on April 6 to  
6 Judge Baer saying that they had had the opportunity to closely  
7 review the motion and the evidence on which it relies, and they  
8 asked for three things. One was documents concerning terms and  
9 conditions of the programs, which we've agreed to and produced.  
10 Depositions of the declarants. And number three, contact  
11 information for defendants' current or former interns and their  
12 supervisors.

13 And on the second one, the declarants, the judge ruled  
14 they could have the HR representatives. On the third one he  
15 denied that request. And what we had argued to the judge is  
16 that essentially this would be giving plaintiffs precisely what  
17 they are seeking through the preliminary certification process.  
18 Which is in the event that they obtain preliminary  
19 certification of the class, then they get the names, they can  
20 make contacts with the proposed class members, and they can  
21 decide whether or not they want to opt into the class.

22 But this is a little bit putting the cart before the  
23 horse. And certainly for purposes of determining what a  
24 corporate policy or practice is, it has absolutely no relevance  
25 at all. So, that is the reason why, when we produced documents

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1 which had intern names on it, we redacted them consistent with  
2 the scope of Judge Baer's first order, and then his second  
3 order which specifically noted that this was preliminary  
4 discovery for purposes of opposing our motion.

5 THE COURT: Ms. Wagoner.

6 MS. WAGONER: Your Honor, there is just no basis for  
7 redacting these documents that are responsive and there is -- I  
8 don't understand any -- I don't see any reason for it to  
9 actually be done. As a practical matter, at the depositions it  
10 becomes very difficult to ask questions about documents that  
11 have been redacted when we can't identify a particular person.

12 THE COURT: Was that a problem yesterday?

13 MS. WAGONER: Well, yesterday the witness didn't  
14 interact with the intern program. It's really the deposition  
15 tomorrow where we're going to be dealing with this.

16 THE COURT: You won't have the new documents of  
17 tomorrow's deponents contact with her interns since  
18 Mr. Donnellan just agreed to do it. You won't have them before  
19 tomorrow. So, unless some of the documents you already have  
20 are ones you're going to ask this witness about, in which case  
21 one solution is to give a list to Mr. Donnellan or his  
22 colleagues of the documents you're going to inquire about that  
23 were redacted, which is something that is suggested by the  
24 federal rules notes on deposition anyway, and have him bring  
25 the unredacted copies for the witness to look at. So if the

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1 witness can't place a document without knowing which intern  
2 name it belongs to, that can be resolved. And for purposes of  
3 the transcript, you can come up with a code for each one, so  
4 you know when you're talking about the same intern more than  
5 once, that will be intern A every time, and the next intern  
6 will be intern B, and Mr. Donnellan or the folks from Proskauer  
7 defending the deposition will keep a list that they will keep  
8 as officers of the court that say intern A was really intern  
9 Sherlock Holmes, and intern B was intern John Watson and etc.,  
10 etc. And at some point if that's relevant for this motion, as  
11 opposed to merits if you win the motion, or win certification  
12 ultimately, then you get the names.

13 If this had come to me before it was done and there  
14 were delay issues, which apparently there were, I might have  
15 felt differently. But at this point with it all being done  
16 except for the new documents about to come, unless you can say  
17 there is something other than tomorrow's deposition that you  
18 need the names for, at this stage of the litigation, it seems  
19 to me you are trying to get through the back door, part of the  
20 information that you'll only get otherwise if collective action  
21 status is granted.

22 MS. WAGONER: Just so I understand the proposal, your  
23 Honor. Is it that we would also have the name in the document  
24 that we are -- the name of the intern that we want to inquire  
25 about? For example, we've got spreadsheets that list every

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1 intern who work for Hearst for an entire semester. I have  
2 copies of them here if you'd like to see them.

3 THE COURT: Sure. With the names redacted or in it?

4 MS. WAGONER: With the names redacted. That's the  
5 only version that we've got.

6 THE COURT: What's the relevance?

7 MS. WAGONER: Well, for instance, some of these, there  
8 is a column on the spreadsheet, it might help if you had it in  
9 front of you.

10 THE COURT: Sure. Okay.

11 MS. WAGONER: There is a column that says "paid" on  
12 these spreadsheets, that says "credit" and "paid." Under the  
13 "paid" column there are some people where it says "yes." We  
14 want to understand why that is. We want to know why, for  
15 example, redacted intern number 100 was paid. I imagine the  
16 deponent will not know why that was without seeing the name and  
17 knowing the circumstances around that.

18 THE COURT: I am not sure the deponent will know even  
19 seeing the name, but why isn't my solution, which is they'll  
20 bring the unredacted copy of this tomorrow, so you'll say why  
21 was intern number 121 paid, and she'll look at her list and if  
22 she needs to know that was Sherlock Holmes, she'll then answer  
23 accordingly. But with just calling the person intern 121.

24 MS. WAGONER: We would not have a copy of that  
25 document that she was looking at? We would just use this one?

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1 THE COURT: Yes.

2 MS. WAGONER: Okay. I guess my concern would just be  
3 if there were particular identifying circumstances, the witness  
4 then won't testify about that. And because there were  
5 redactions and because their identities were subject to some  
6 kind of protection that seems to us overbroad, that she  
7 wouldn't be able to talk about what the circumstances were.

8 THE COURT: First of all, let's worry about what the  
9 witness can and can't do when you do it. And obviously  
10 defendant will be at risk that if this blows up, the witness  
11 will come back. But, unless you can tell me why, other than  
12 the issue of why some were paid and most were not, needs the  
13 identification of particular names at this stage, again, it  
14 seems to me this is material that you will get if collective  
15 action certification is granted, but otherwise, what is the  
16 relevance? And that's what I still haven't heard an answer to.

17 MS. WAGONER: Well, and I would just say that the  
18 relevance is that absent name, identifying circumstances should  
19 be on the table tomorrow. If the answer is, well, she is the  
20 granddaughter of a Hearst. We don't want that to be hidden  
21 simply because we don't have the name. That's what I'm  
22 concerned about.

23 THE COURT: I don't think that will be a problem.  
24 Here are the documents back.

25 So the redaction is allowed. However, for the new

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1 documents you're about to produce, Mr. Donnellan, there better  
2 not be any delay because of the redaction.

3 MR. DONNELLAN: No, your Honor, we'll produce them as  
4 soon as possible.

5 THE COURT: Let's put a date on that. So that as soon  
6 as possible doesn't --

7 MR. DONNELLAN: Next Wednesday, your Honor.

8 THE COURT: Does that work?

9 MS. WAGONER: Yes, your Honor, it does.

10 THE COURT: Okay. Last thing I think is the deadlines  
11 which now with the passage of a week may need some further  
12 revision. Is the June 4 and June 15 date still what you all  
13 want?

14 MR. DONNELLAN: Yes, your Honor.

15 MS. WAGONER: That's fine with us, your Honor.

16 THE COURT: Even though, let's just make sure we can  
17 all count. You're not getting the additional documents until  
18 May 30.

19 MS. WAGONER: That's true.

20 THE COURT: You'll still be able to get it done by  
21 June 4?

22 MS. WAGONER: It would be helpful to have an extra  
23 week to be able to review those documents, because we don't  
24 know how many there are right now, your Honor. So I think if  
25 June 15 deadline for us --

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1 THE COURT: That gets you more than a week.

2 MS. WAGONER: My math is bad, your Honor. I think I'm  
3 trying to say June 11.

4 THE COURT: Let's move you from June 4 to June 7. And  
5 you were giving yourself 11 days it looks like, so June 18 for  
6 the reply. Does that work?

7 MR. DONNELLAN: Yes, your Honor.

8 THE COURT: All right. Anything else we need to deal  
9 with or anything you anticipate or is this going to end my role  
10 subject to whatever calls I get from you tomorrow from the  
11 deposition in this matter at least at this stage of the case?

12 MR. DONNELLAN: Your Honor, I just want to make sure  
13 if we are going to go forward with the deposition tomorrow,  
14 there is not going to be an attempt to leave it open given the  
15 fact we'll be producing more documents on Wednesday. If that's  
16 the case, I prefer to set a different date for the deposition.

17 MS. WAGONER: We would be open to that. For example,  
18 doing the deposition next Friday instead of this Friday. But I  
19 think we would then need more time than June 7 to be able to  
20 deal with the --

21 THE COURT: These e-mails don't strike me, you can ask  
22 the generalized questions without names, or if names are going  
23 to come up, have the witness write down for you, Mr. Donnellan,  
24 and start calling them intern 1, 2, or A, B, C, whatever, you  
25 keep the list. When she referred to intern A, it meant

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1 Sherlock Holmes, and then when you redact the e-mails, you'll  
2 use the same code that was used at the deposition so it can  
3 link up. Does that make sense?

4 MR. DONNELLAN: That makes sense, yes. Thank you.

5 THE COURT: So since I don't want to make this any  
6 more extended than it already is, let's proceed with the  
7 deposition tomorrow. On that ground rule, I guess technically,  
8 two technical points. One, pursuant to 28 U.S. Code Section  
9 636 and Federal Rule of Civil Procedure 72, you all will have  
10 14 days from this conference to file any objections to my  
11 rulings with Judge Baer. Failure to do so within 14 days  
12 constitutes a waiver for all further purposes. And since  
13 you've heard my ruling, the 14 days begins immediately  
14 regardless of how soon you get the transcript.

15 Also, since I am talking about the transcript, and so  
16 I don't forget, I'm directing both sides to order the  
17 transcript and split the cost accordingly.

18 Finally, it is my practice at first conferences to  
19 remind parties that they have the option pursuant to 28 U.S.  
20 Code Section 636(c) to agree to have the case in front of me  
21 for particular motions or for all purposes with direct appeal  
22 rights to the Second Circuit. It requires two to tango. Or,  
23 to put it differently, unless both sides say yes the case  
24 remains with Judge Baer.

25 Anything further with regard to that? Or are we ready



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1 to adjourn.

2 MR. DONNELLAN: Nothing further, your Honor, for  
3 defendants.

4 MS. WAGONER: Nothing further from plaintiff.

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